

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAIME G. SALDANA,
BOP #A073-818-147,

Plaintiff,

vs.

CESAR R. FAVILA, et al.,

Defendants.

Civil No. 12cv2795 LAB (JMA)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Plaintiff, who was detained at the Immigration and Customs Enforcement (“ICE”) Processing Center in El Centro, but may have since been deported,¹ has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983.² Plaintiff also invokes federal question jurisdiction under 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of the Federal Bureau of*

¹ On the first page of his Complaint, Plaintiff claims to “presently reside[]” in Mexico. (Compl. at 1.) In the section of his Complaint entitled “Background and Reasons for this Action,” however, Plaintiff claims to have been in ICE custody since October 2011, pending immigration and deportation proceedings. (*Id.* at 17-18.)

² Plaintiff “Jaime G. Saldana” has signed the Complaint (Compl. at 5, 16), but another inmate, Taek Samuel Yoon, BOP # A-042-589-267, has apparently helped him draft the pleading and has mailed it to the Court on Plaintiff’s behalf, “because [Plaintiff] can not make or pursue this case in El Centro for his safety.” (*Id.* at 4.) Pro se litigants, however, have no authority to represent anyone other than themselves. *See Johns v. County of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997).

1 *Narcotics*, 403 U.S. 388 (1971). While far from clear, it appears Plaintiff claims several ICE
 2 officials violated his constitutional rights while he was in their custody pending deportation
 3 proceedings sometime between October 2011 and January 25, 2012. (Compl. at 1, 10-13.)

4 **I. Failure to Pay Filing Fee or Request IFP Status**

5 All parties instituting any civil action, suit or proceeding in any district court of the
 6 United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See*
 7 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only
 8 if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C.
 9 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,
 10 169 F.3d 1176, 1177 (9th Cir. 1999).

11 Plaintiff has not prepaid the \$350 filing fee required to commence a civil action pursuant
 12 to 28 U.S.C. § 1914(a). And, while Plaintiff claims, in his Complaint, that he has "no money,"
 13 "no job," and "cannot pay the filing fee," (Compl. at 5), he has not filed a Motion to Proceed *In*
 14 *Forma Pauperis*, or the affidavit required to support such a Motion pursuant to 28 U.S.C.
 15 § 1915(a)(1). Therefore, the case must be dismissed pursuant to 28 U.S.C. § 1914(a). *Id.*

16 **II. Conclusion and Order**

17 For the reasons set forth above, the Court hereby:

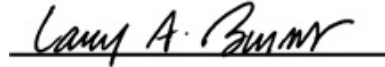
18 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
 19 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

20 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:
 21 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed
 22 IFP which includes, if he was a "prisoner" as defined by 28 U.S.C. § 1915(h) at the time he filed
 23 his Complaint, a certified copy of his trust account statement for the 6-month period preceding
 24 the filing of this action. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).³

25
 26 ³ Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the
 27 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint will be
 28 subject to sua sponte screening and dismissal pursuant to either 28 U.S.C. § 1915A(b)—if he is a
 prisoner—or 28 U.S.C. § 1915(e)(2)(b)—if he proceeds IFP. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27
 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to
 sua sponte dismiss an *in forma pauperis* complaint that fails to state a claim); *see also Rhodes v.*
Robinson, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing sua sponte screening required by 28 U.S.C.

1 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this
2 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
3 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
4 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without
5 prejudice and without further Order of the Court.

6 DATED: December 17, 2012

7 

8 **HONORABLE LARRY ALAN BURNS**
9 United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 _____
§ 1915A(b) of all civil actions filed by prisoners "seek[ing] redress from a governmental entity or officer
or employee of a governmental entity.").